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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/462,337

04/17/2000

Klaus-Peter Zeffler

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02/24/2005

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EXAMINER

KIM, DAVID S

ART UNIT

PAPER NUMBER

2633

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/462,337

Applicant(s)

ZEFFLER ET AL.

Examiner

David S. Kim

Art Unit

2633

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on 24 January 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 14-23 and 27.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed on 24 January 2005 (arguments regarding 35 U.S.C. 103(a) on p. 6-8) have been fully considered but they are not persuasive. The Office has already presented a response to similar, if not the same, arguments in an Advisory Action (Paper No. 17, mailed on 01 June 2004) and the most recent Final Rejection (mailed on 19 October 2004). The present status of the case is that it is under a Final Rejection (mailed on 19 October 2004). However, the claims have not been amended since Applicant's last amendment (Paper No. 15, filed on 03 May 2004). Additionally, no further arguments have been introduced since that response (Paper No. 15, filed on 03 May 2004), as well. Accordingly, the Office addresses this present After Final response with (a) the same standing rejections from the most recent Final Rejection (mailed on 19 October 2004) and (b) substantially the same standing response previously presented in said most recent Final Rejection (mailed on 19 October 2004). The text of said substantially the same standing response follows below:

35 U.S.C. 103

Applicant's arguments filed on 24 January 2005 regarding the rejections under 35 U.S.C. 103 have been fully considered but are not persuasive. Applicant presents two points.

Regarding the first point, Applicant states,

"the Office Action suggests that the implementation of the signaling and control information would have been obvious to a person of ordinary skill in the art. Applicant respectfully disagree and request evidence of such" (p. 6-7, bridging paragraph).

Examiner respectfully points to Widmer et al. to show the implementation of signaling and control information (Widmer et al., col. 1, lines 15-20). Thus, Applicant's first point is not persuasive.

Regarding the second point, Applicant refers to a Federal Circuit case to argue that there is no "specific understanding or principle within the knowledge of a skilled artisan" that would motivate a person having no knowledge of the claimed subject matter to "make the combination [of Widmer et al. and Nakamura et al.] in the manner claimed" (p. 6-7, bridging paragraph).

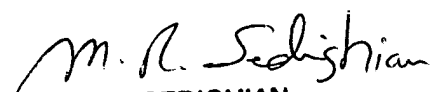
Examiner respectfully notes that Widmer et al. teaches that, for multiple reasons, it is often required to transmit signaling and control information in digital transmission systems in which telephone and/or data channels are bunched and transmitted over links and/or cable (Widmer et al., col. 1, lines 9-24). Widmer et al. then proceeds to disclose an advantageous method for transmitting signaling and control information in digital transmission systems (Widmer et al., col. 1, lines 25-46). Nakamura et al. also teaches digital transmission systems in which telephone and/or data channels are bunched and transmitted over optical fiber links and/or cables (Nakamura et al., multiplexers in Figures, col. 1, lines 14-43, col. 15, lines 41-55). The systems of Nakamura et al. also employ the transmission of signaling and control information (Nakamura et al., note control microprocessor units MPU 85 throughout the Figures and corresponding description in the specification). Accordingly, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to implement the advantageous method of Widmer et al. for transmitting signaling and control information in the networks/systems of Nakamura et al. From the perspective of Widmer et al., one of ordinary skill in the art would have been motivated to combine Widmer et al. and Nakamura et al. since larger capacity and higher speed transmissions are gained through the WDM/TDM optical fiber networks of Nakamura et al. (Nakamura et al., abstract, col. 1, lines 23-36). From the perspective of Nakamura et al., one of ordinary skill in the art would have been motivated to combine Widmer et al. and Nakamura et al. since it is possible to transmit signaling and control information without intervening in or modifying existing facilities, nor altering the structure of original useful information, through the method of Widmer et al. (Widmer et al., col. 1, lines 20-28). In view of this case of obviousness, Examiner considers it difficult to consider Applicant's point to be convincing. Thus, Applicant's second point is not persuasive.

Summarily, Applicant's arguments are not persuasive. Thus, Examiner respectfully maintains the standing rejections.

Continuation of 13. Other:

35 U.S.C. 112

Applicant's arguments filed on 24 January 2005 regarding the rejection of claim 18 under 35 U.S.C. 112 has been reconsidered. The basis of this rejection is that the term "brief" in claim 18 is a relative term of degree. After reviewing MPEP 2173.05(b), which discusses the issue of relative terminology in claims, Examiner determines that, although the specification does not appear to provide a standard for measuring the degree of the term "brief," one of ordinary skill in the art would be reasonably apprised of the scope of the invention in view of the prior art and the status of the art. Accordingly, this rejection is respectfully withdrawn.


M. R. SEDIGHIAN
PRIMARY EXAMINER